

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SUSAN M. FOLK</b>	)	
Claimant	)	
VS.	)	
	)	
<b>HALDEX BRAKE</b>	)	Docket Nos. 258,343
Respondent	)	and 1,011,042
AND	)	
	)	
<b>KEMPER INSURANCE COMPANY and</b>	)	
<b>ROYAL AND SUN ALLIANCE INSURANCE</b>	)	
<b>COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and its insurance carrier, Kemper Insurance Company, appeal the October 20, 2005 Order of Administrative Law Judge Brad E. Avery. The Administrative Law Judge denied respondent's motion to terminate medical care and treatment/preliminary hearing, finding that respondent's motion was essentially an appeal of the court's prior Order of December 11, 2003. The Administrative Law Judge then ruled that his court had no jurisdiction over an appeal of an award for post-award medical care.

**APPEARANCES**

Claimant appeared by her attorney, Chris Miller of Lawrence, Kansas. Respondent and its insurance carrier Kemper Insurance Company (Kemper) appeared by their attorney, Michelle Daum Haskins of Kansas City, Missouri. Respondent and its insurance carrier Royal and Sun Alliance Insurance Company (Royal) appeared by their attorney, Timothy J. Piatchek of Lenexa, Kansas.

**RECORD**

The Board has considered the following record for the purposes of this appeal: the transcript of the Preliminary Hearing of December 9, 2003, with attached exhibits; the deposition of the claimant dated October 14, 2005, with attached exhibits; the deposition

of Edward J. Prostic, M.D., taken October 19, 2005, with attached exhibits; the deposition of Peter V. Bieri, M.D., taken September 15, 2005, with attached exhibits; the transcript of Motion Hearing held July 25, 2005; as well as the pleadings and documents contained in the file of the Division of Workers Compensation in these two docketed claims.

### **ISSUES**

Did the Administrative Law Judge err in ruling that he had no jurisdiction over the matter and refusing to determine the issues raised to the court by respondent and claimant?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Board finds as follows:

This matter comes before the Board on an appeal from the October 20, 2005 Order of Administrative Law Judge Brad E. Avery. The Administrative Law Judge (ALJ) refused to consider respondent's motion to terminate medical care and treatment/preliminary hearing and claimant's application for post-award medical, finding that he did not have jurisdiction to consider the matters. This matter originally came before the ALJ after claimant suffered accidental injury on June 11, 1999. That date of accident, which was assigned Docket No. 258,343, was settled in a running award on March 8, 2001, for a 5 percent permanent partial impairment to the body as a whole. That settlement allowed for review and modification and claimant's entitlement to future medical treatment to remain open for future determination.

A second claim for another accident was filed June 11, 2003, alleging a series of accidents beginning March 9, 2001, and continuing thereafter. That claim was assigned Docket No. 1,011,042.

At the time of the original preliminary hearing, held December 9, 2003, the ALJ entered an Order For Medical Treatment on claimant's behalf, with Dr. Brian Wolfe as the authorized treating physician, including any referrals from Dr. Wolfe, until further order. The ALJ determined that claimant's need for medical treatment stemmed from the original injury in Docket No. 258,343. That Order and the transcript associated with that hearing carried both docket numbers.

Respondent and Kemper then filed a motion to terminate medical care and benefits in Docket No. 258,343. It should be noted that Kemper had the workers compensation insurance coverage for the original date of accident, with Royal providing the workers compensation insurance coverage for the second claimed series of accidents.

The parties then proceeded to take the depositions of Dr. Bieri and Dr. Prostic. After reviewing the transcripts of those depositions, it is clear that a significant dispute exists regarding whether claimant's ongoing difficulties stem from the 1999 accident or are from the more recent series of accidents beginning in 2001. Both Dr. Prostic and Dr. Bieri were questioned in detail regarding claimant's symptoms and the dates that those symptoms began. There was also a significant inquiry regarding any neck problems claimant had before the second alleged date of accidents.

Claimant's attorney then provided a letter to the ALJ dated October 18, 2005, and filed with the Division of Workers Compensation on that same date, regarding the above listed cases and the fact that those cases had been consolidated for the purpose of obtaining a decision regarding respondent's request to terminate medical benefits in Docket No. 258,343 and claimant's request for medical treatment on a preliminary basis in connection with Docket No. 1,011,042.

It was two days later, on October 20, 2005, that the ALJ issued his Order, finding that he lacked jurisdiction to consider respondent's motion. That Order, however, carried only Docket No. 258,343.

On October 20, 2005, the same date as the ALJ's Order, claimant submitted a "Submission Letter On Preliminary Request For Medical Treatment" in Docket No. 1,011,042. The record listed by claimant in that submission letter is the identical record to the one listed herein and lists as one of the issues whether claimant suffered additional injuries, arising out of and in the course of her employment since her injuries which occurred in connection with Docket No. 258,343. There is no order in the file from the ALJ with regard to that dispute.

The ALJ determined that respondent's motion was essentially an appeal of the court's Order of December 11, 2003. That Order, which carried both docket numbers, determined that claimant's need for medical treatment stemmed from the original injury in Docket No. 258,343. It is clear from this record that that issue remains in dispute.

This matter involves two specific sections of the Kansas Workers Compensation Act. K.S.A. 44-534a deals with preliminary hearings and orders for medical treatment. In this instance, it has been alleged that claimant suffered a new series of injuries in Docket No. 1,011,042, with a series of accidents beginning March 9, 2001, and continuing forward from that date. The ALJ, even though he ruled in December 2003 on Docket No. 1,011,042, is not limited in the number of preliminary hearings which may be held in a case.<sup>1</sup> Furthermore, the ALJ has the jurisdiction and authority to amend, modify and/or clarify a preliminary order as the evidence may dictate or as circumstances may require.

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<sup>1</sup> *Briggs v. MCI Worldcom*, No. 1,003,978, 2003 WL 21396795 (Kan. WCAB May 30, 2003).

Additionally, K.S.A. 44-510k (the post-award medical benefit statute) is also being considered. That statute gives the ALJ the authority, post award, to provide for medical care if it is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.<sup>2</sup> That statute goes on to state that no post-award benefit shall be ordered without giving all parties the opportunity to present evidence, including taking testimony on any of the disputed matters.<sup>3</sup>

It is clear neither K.S.A. 44-534a nor K.S.A. 44-510k limit an administrative law judge's ability to make determinations of ongoing disputed issues regarding pre- or post-award medical care.

This is not an instance where a party is requesting additional hearings with no basis for the request. Since the time of the ALJ's original Order in December of 2003, the parties have taken the depositions of the claimant and two doctors regarding claimant's ongoing difficulties and the relationship of those difficulties to her various accidents. The Board finds, in this instance, that the ALJ does have the jurisdiction to determine whether claimant's ongoing difficulties are associated with the injury suffered in 1999 in Docket No. 258,343, or whether the ongoing difficulties and need for medical care stem from the new series of accidents beginning in March of 2001 in Docket No. 1,011,042.

This matter is, therefore, reversed and remanded to the ALJ for further proceedings consistent with his Order.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated October 20, 2005, should be, and is hereby, reversed and the matter remanded to the Administrative Law Judge for further proceedings consistent with this Order.

**IT IS SO ORDERED.**

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<sup>2</sup> K.S.A. 44-510k(a).

<sup>3</sup> K.S.A. 44-510k(a).

Dated this \_\_\_\_ day of January, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Chris Miller, Attorney for Claimant  
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier  
(Kemper)  
Timothy J. Piatchek, Attorney for Respondent and its Insurance Carrier (Royal)  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director